IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.54 OF 1996

The State of Maharashtra — Appellant
vs.
Deoram Fakira Palmahale & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.55 OF 1996

The State of Maharashtra — Appellant
vs.
Balkrishna Ramchandra Palmahale &ors. Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.56 OF 1996

The State of Maharashtra — Appellant
vs.
Jagannath Moru Sonawale & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.57 OF 1996

The State of Maharashtra — Appellant
vs.
Bhagwat Pandhaarinath Palmahale & ors. Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.58 OF 1996

The State of Maharashtra — Appellant
vs.
Waman Vithal Palmahale & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

ALONG WITH
FIRST APPEAL NO.59 OF 1996

The State of Maharashtra — Appellant
vs.
Seetaram Anaji Palmahale & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.60 OF 1996

The State of Maharashtra — Appellant
vs.
Ramchandra Tulshiram Bhagwat & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.61 OF 1996

The State of Maharashtra — Appellant
vs.
Laxman S. Gavande — Respondent

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.63 OF 1996

The State of Maharashtra — Appellant
vs.
Laxman J. Gavande & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.64 OF 1996

The State of Maharashtra — Appellant
vs.
M.V.Pawar — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

ALONG WITH
FIRST APPEAL NO.65 OF 1996

The State of Maharashtra — Appellant
vs.
Laxman Eknath Thete — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH
FIRST APPEAL NO.66 OF 1996

The State of Maharashtra — Appellant
vs.
Laxman E. Thete & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

ALONG WITH

FIRST APPEAL NO.67 OF 1996

The State of Maharashtra — Appellant

vs.

Savliram Rama Gangode — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

ALONG WITH
FIRST APPEAL NO.68 OF 1996

The State of Maharashtra — Appellant

vs.

Hari Pandu Gavande — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

AND ALONG WITH
FIRST APPEAL NO.69 OF 1996

The State of Maharashtra — Appellant

vs.

Hari Shankar Gavande & ors. — Respondents

Mrs.G.P. Mulekar, Addl.G.P. for the appellant.

Mr.R.M.Haridas i/b.Mr.P.N.Joshi for respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 6th September, 2007

ORAL JUDGMENT:

All these Appeals are by the State whereby a common judgement dated 11.2.1994 passed by the IInd Additional District Judge, Nasik has been challenged.

2. The operative part of the impugned judgment is as follows:

"1. The claimant in Land Reference No.137 of 1988 for G.No.17 at the rate of Rs.14,000/- shall get Rs.4340/- for area of 31 ARE and after deducting amount which is already granted Rs.2924/- remaining amount of enhancement would come to Rs.1416.

. For G.No.74 present enhanced rate would be Rs.12,500/- per hectare and the value would be Rs.7500/- for 60 ARE out of which already paid amount of Rs.3900/- is deducted and enhancement would come to the tune of Rs.3600/-.

. For G.No.368 at the rate of Rs.12,500/- for 8 Are land value would be Rs.1000/- out of this, Rs.520/- are granted and enhanced amount would be Rs.480/-. Thus, claimed in L.R.No.137 of 1988 would get total enhancement of Rs.5496/-.

2. In L.R.No.138 of 1988 for G.No.21 as per enhanced rate at the rate of Rs.11,000/- value of 40 Are would come to Rs.4400/-. Already Rs.2200/- are paid. Only remaining amount of Rs.2200/- will be given as enhancement.

. As regards G.No.76 the extent of 1 hectare 20 Are, new rate applicable would be at the rate of Rs.12,500/-. The value of which will come to the tune of Rs.15,000/-. Rs.7800/- are already granted. After deducting the same the enhancement will come to the tune of Rs.7200/-. The claimant in the reference would also entitle to the enhancement of Rs.185957/- for guava orchard and Rs.1226 towards injurious affection and severance. Thus total compensation which the claimant would get to the tune of Rs.196583/-.

3. The claimant in L.R.No.139 of 1988 will get compensation at the rate of rs.12500/- for 93 Are from G.No.43. He is entitled to get Rs.11625/- out of which Rs.6045 is already paid and he is entitled for enhancement of Rs.5580/- towards land and towards orchard of 25 guava trees, he is entitled for Rs.9,700/-, towards enhancement. Thus total enhancement awarded to him will have to the extent of Rs.15280/-.

4. The claimant in L.R.no.140/88 for land G.No.51A at the rate of Rs.12,500/- shall get Rs.8375/- for 67 Are and after deducting amount of Rs.4325/- which is already received, he is entitled for Rs.4050/-.

. For G.No.62 which is 1 hectare 34 Are at the rate of Rs.12,500/- this claimant is entitled for Rs.16750/- and

after deducting the amount which is already paid Rs.8710/- now he will be entitled to get Rs.8040/-. Thus the claimant is entitled total enhancement of Rs.12090/-.

5. The claimant in L.R.No.141 of 1988 for his land G.No.52 area 1 hectare and 38 Are at the rate of Rs.12,500/- shall get Rs.17250/- out of which he has received Rs.8970/-. Now he is entitled to get Rs.8280/-.

6. In L.R.No.142/88 for land G. No.64 area of 40 ARE at the rate of Rs.12500/- the claimant shall get Rs.5000/-. He has received amount of Rs.2600/-. Now he is entitled for additional compensation of Rs.2400/-.

7. The claimant in Land Reference No.143 of 1988 G.No.69 area 53 ARE at the rate of Rs.12500/- shall get Rs.6625/- out of which he has received Rs.3445/-. Now he shall be entitled for additional compensation of Rs.3180/-.

8. The claimant in L.R.No.144 of 1988 for land G.No.77 to the extent of 50 ARE area at the rate of Rs.12,500/- shall get Rs.6250/- out of which he has received Rs.3250/-. Now he shall be entitled to get additional compensation of Rs.3000/-.

9. The claimant in L.R.No.145/88 for G. No.78 of which 36 ARE area has been acquired, will be entitled to get enhancement at the rate of Rs.12500/- per hectare which will come to Rs.4500/- out of which Rs.2340/- have been paid. Now he is entitled for additional compensation of Rs.2160/-.

10. The claimant in L.R.No.146 of 1988 for land G.No.212 area of 1 hectare 26 ARE at the rate of Rs.12,500/- shall get Rs.15750/- out of it Rs.8190/- have been already paid and he is entitled for additional compensation of Rs.7560/-.

11. The claimant in L.R.No.147 of 1988 for land 54ARE out of G. No.215 at the rate of Rs.12,500/- is entitled to get enhanced compensation of Rs.6750/- out of which he has received Rs.3478. Now he is entitled to get Rs.3272 as additional compensation.

. The claimant is entitled for compensation towards 245 guava trees at the rate of Rs.800/- per tree to the extent of Rs.196000/- out of Rs.100952/- have been already paid. Now he is entitled for the enhancement compensation of Rs.95048/- for guava trees and total Rs.98320/-.

12/-. The claimant of L.R.No.148 of 1988 is entitled for compensation for 92 ARE area out of G.No.264 at the rate of Rs.9000/- per hectare which will come to the tune of Rs.8280/-. He has already received Rs.3640/- and he shall be entitled for additional compensation of Rs.4640/-. This claimant is not entitled for any compensation towards guava orchard.

13/- The claimant in L.R.No.149 of 1988 for his land G.No.277 to the extent of 1 hectare and 6 ARE at the rate of Rs.11,000/- is entitled for compensation of Rs..11660/- out of which he has been already awarded Rs.5665/-. After deducting this amount he is entitled to get enhanced amount of Rs.5995/-.

14/- The claimant in L.R. No.150/88 for his land G.No.354 for area of 2 hectare and 50 ARE is entitled to get compensation at the rate of Rs.12500/- which will come to the tune of Rs.31250/- out of which Rs.16180/- have been already paid and now claimant shall be entitled to get additional compensation of Rs.15070/-.

15. The claimant in L.R.No.151/88 for area of 78 ARE out of G.No.380 at the rate of Rs.12,500/- shall be entitled to receive compensation to the extent of Rs.9750/- out of which Rs.5070/- have been already said and he shall be entitled for additional compensation of

Rs.4680/-.

16. The claimant in L.R.No.152 of 1988 for his land of 54 ARE out of G. No.383 is entitled for compensation at the rate of Rs.12500/- per hectare i.e. Rs.6750/- out of which he has been already paid Rs.3510/-. Now he is entitled for additional compensation of Rs.3240/-.

. This claimant shall also be entitled for compensation of 146 guava trees at the rate of Rs.800/- per tree i.e. Rs.116800/- out of which he has been paid Rs.44282/-. Now he is entitled for additional compensation of Rs.72518/-. Thus, the claimant is entitled for total additional compensation of Rs.75758/-.

17. The claimant in L.R.No.153 of 1988 for his land 64 ARE out of G.No.388 at the rate of Rs.12500/- is entitled to get Rs.8000/- out of which he has been already paid amount of Rs.4160/- and after deducting this amount, he is entitled to get Rs.3840/-, as additional compensation.

. All the claimants are entitled for 30% solatium on the additional compensation and 12% component from the date of notification till passing of the award.

. The claimants shall also be entitled for interest on

above amount at the rate of 9% p.a. for the period of one year from the date of taking possession by private negotiation and thereafter at the rate of 15% p.a. till full realisation of the compensation from the State Government.

. No order as to costs."

3. The facts are as follows:

. A Notification under Section 4 of the Land Acquisition Act (LA Act) dated 4.2.1981 issued for acquisition of lands for sub-mergence of the Waghad dam. All the claimants/respondents herein have filed their respective claims. They are from village Chachadgaon, Tal. Dindori, Dist.Nashik. The lands in question are Bagayat lands having fruit bearing trees standing thereon.

4. The Special Land Acquisition Officer has grouped these lands in five groups. The following is the chart to disclose the land reference number, gat number, area acquired, group number, rate granted per hectare and lastly the compensation awarded.

Land Ref. G.No.	Area acquired	Group No.	Rate granted per hectare	Compensation awarded

1	2	3	4	5	6
				Rs.	Rs.
1)137/88	17	31 ARE V		10,000/-	2924/-
	74	60 ARE III		6,500/-	3900
	368	8 ARE III		6,500/-	520/-
2)138/88	21	40 ARE II		5,500/-	2200/-
	76	1 H.20 ARE III		6,500/-	7800/-
3)139/88	43	93 ARE III		6,500/-	6045/-
4)140/88	51A	67 ARE III		6,500/-	4325/-
	62	1.34 H. III		6,500/-	8710/-
5)141/88	52	1.38 H. III		6,500/-	8970/-
6)142/88	64	40 ARE III		6,500/-	2600/-
7)143/88	69	53 ARE III		6,500/-	3445/-
8)144/88	77	50 ARE III		6,500/-	3250/-
9)145/88	78	36 ARE III		6,500/-	2340/-
10)146/88	212	1.26 H. III		6,500/-	8190/-
11)147/88	215	54 ARE III		6,500/-	3478/-
12)148/88	264	91 ARE I		4,000/-	3640/-
13)149/88	277	H. 1.06 ARE II		5,500/-	5665/-
14)150/88	354	H.2.50 ARE III	6,500/-		16180/-
15)151/88	380	78 ARE III		6,500/-	5070/-
16)152/88	383	54 ARE III		6,500/-	3510/-
17)153/88	388	64 ARE III		6,500/-	4160/-

5. The different rates to the guava trees were granted to the respective claimants. The respondent/original

claimants therefore made references under Section 18 of the LA Act for enhancement of the compensation.

6. All these references have been clubbed together for hearing and for the purposes of disposal. The appellants contested the same. However, without filing written statement. The claimants/respondents witnesses were cross-examined by the appellants through the learned District Government Pleader. The following two issues have been framed:

(i) Whether the claimants prove that the compensation awarded by Special Land Acquisition Officer is inadequate?

(ii) What additional amount of compensation, if any claimant is entitled to get?

7. After considering the material on the record, the trial Court, as reproduced above, awarded the compensation separately for the land and for the guava trees. Therefore, all these appeals by the State.

8. The learned counsel appearing for the appellants has strongly relied on **K.A.A.Raja & ors. v. State of Kerala & anr., (1994) 5 SCC 138, State of Haryana v. Gurtcharan Singh & anr., 1995 Supp.(2) SCC 637 and**

Airports Authority of India v. Satyagopal Roy & ors., (2002) 3 SCC 527 and basically contended that in view of the above judgements, the trial Court and even the Special Land Acquisition Officer ought not to have awarded the compensation separately as done in the present cases.

9. She has strongly relied on para 8 of the **Airports Authority of India (supra)**, the relevant portion of which reads thus:

> "8. It is settled law that in evaluating the market value of the acquired property, namely, land and building or the land with fruit-bearing trees standing thereon, value of both is to be determined not as separate units but as one unit....."

10. Admittedly, in the present case, the trial Court as well as the Special Land Acquisition Officer have not considered and awarded the compensation based on the principle of multiplier. The assessment is admittedly based on the sale instances in other similarly situated lands. The judgements of the Supreme Court, therefore, as relied are totally distinct and distinguishable on the facts of the present cases. All the above judgements of the Supreme Court except the principle as quoted above were dealing with the cases of multiplier. The principle as noted above is not in dispute. However, there is nothing to show from all these

judgements that there is total bar not to grant such compensation as awarded in the present cases, that is by granting the compensation separately also for the guava trees apart from the land.

11. Admittedly, there was no written statement filed by the State. There was no objection of any kind raised at the relevant point of time in this regard. The submission, therefore, as raised for the first time in the present appeals just cannot be accepted. There is no such ground raised in the present appeals except the specific ground that "the learned Judge has erred in awarding compensation for the guava trees at Rs.800/- per tree."

12. Even otherwise while granting the compensation, the trial Court has taken note of quality of land and its rates based on the material available on record, as recorded in para 9 as under:

"9. ..... No doubt claimants are claiming Rs.20,000/- per hectare for Rabbi land, Rs.25,000/- for the paddy land and Rs.30,000/- to Rs.40,000/- for the Bagait land."

This was based on the evidence led by the respective claimants. The assessment, therefore, as made based on

the quality of the land in no way be treated as total assessment of land along with the guava trees. There is no separate and specific finding given in this regard. Therefore, the submission that while granting the compensation and while assessing the lands in question, both the Authorities have applied its mind and taken into consideration the guava trees is not correct. The record and reasoning shows otherwise. It is necessary, while assessing the valuation of land, to give detailed reasoning in respect of the land and building or the land with fruit-bearing trees standing thereon. Normally it is necessary for the Authorities, as observed by the Apex Court in Airports Authority of India (supra) that both need to be determined not as a separate unit but as one unit. However, in the absence of any specific challenge raised at the relevant time now, at this stage of the proceeding, there is no point in remanding the matter back for re-assessment or re-valuation. As recorded, the notification under section 4 of LA Act was passed in 1981, the basic order was passed in 1986 and the impugned judgement and award is of the year 1994.

13. As noted, the procedure is not foreign in so far as the assessing the land value based on the comparable sale instances. The Apex Court in Airports Authority of India (supra) has accepted this principle by saying

"Therefore, it would be open to the Land Acquisition Officer or the court, either to assess the land with all its advantages and fix the market value thereof on the basis of comparable sale instances. In case where comparable sale instances are not available and where there is reliable and acceptable evidence on record of the annual income multiplied by appropriate multiplier for its capitalisation. In the case of fruit-bearing trees their net yield is to be taken into consideration, that is to say, by deducting expenses incurred for getting the yield and also the value of the timber and expenses to cut and remove the trees from the land."

14. As noted, in the present cases, both the Authorities based on the comparable sale instances and the orders passed in respective references and after considering the material and evidence placed by the parties on record, assessed the land separately. In these cases, admittedly there was no question of applying any multiplier. In this background, the submission that both the Authorities erred in law by granting compensation separately is not acceptable. As recorded, in the facts and circumstances, it is not feasible to remand the matter again on this ground.

15. In so far as the ground of rate per tree as recorded based on the material available on record which

includes various rates such guava trees ranging from Rs.800/- to Rs.1000/- per tree, the trial Court cannot be said to have erred in law by granting the average rate of Rs.800/- per tree as observed. The finding of facts as arrived at just cannot be overlooked specially when there is no contra-material placed on record. The finding therefore is within the frame work of law and record. I am of the view that there is no case to interfere with the finding recorded in impugned judgement.

16. The detailed finding as recorded for the guava trees are in paragraphs 14 and 16 which read thus:

"14. It was further argued by the learned counsel Shri B.G.Thakre that in other reference which was drawn by Spl.Land Acquisition Officer, he gave Rs.856/- per tree. It is in the evidence of P.W.Tanaji that for the orchard of village Umrale, Rs.850/- per tree were granted and their orchard had Lakhanow variety of guava fruits therefore, they should fetch at least Rs.1000/- per tree. The statement of valuation of the trees in L.A.Case No.35 of 1979 for village Umrale is produced to show that for 15 trees Rs.44,000/- were valued. It will be at least at the rate of Rs.900/- per tree. This valuation report was made by the Deputy Director Horticulture, Nasik. Shri B.G.Thjakre relied on several

text and notifications as to how valuation of the fruit bearing trees should be made. He filed a letter from the Department of Horticulture from Mahatma Phule University Rahuri. He also relied on text book called "Maharashtratil Fal zade", page 160. A circular issued by Director of Horticulture, Maharashtra State Pune dated 5th Jan. 1985 was also pressed in service for valuation of the fruits. Shri Thakire further relied on judgment of my learned brother in L.R.No.89 of 1985. He has also considered valuation of the fruits on the basis of its yield. He arrived at the rate of Rs.900/- or so for per guava tree. This land reference is also arising out from the lands which were acquired for Waghad Dam. Though the same rates cannot be accepted, yet it cannot be said that it is not relevant for my purpose. Shri B.G.Thakire further filed a report of Deputy Director of Horticulture, who had valued 225 guava trees at the rate of Rs.253000/- the rate which will come for more than Rs.1000/- per tree.

16. I have already pointed out that I do not believe there would have been fresh saplings in the land. The rates which have been shown at low level must have been for the spoiled trees. Those trees must have been decayed due to accumulation of the water in the land. Now question before me would be what should be the rate for per tree of guava. The rates which are brought to

my notice are ranging from Rs.800/- to Rs.1000/- per tree. The rates which my learned brother has fixed in L.R.No.89 of 1985 were on the basis of the yield which he calculated on the basis of the market price and so on. However, I find that this calculation is not available for me. Therefore, I cannot take advantage of calculations made by my learned brother in L.R.No.89 of 1985. The rates which have been found for the guava trees which were situated is S.No.30/5 are very high and it appears that they were grafted guava trees. Therefore, this rate is also not proper for adoption. I finally reach to the statement of Deputy Director, Horticulture who valued trees in L.A.Case No.35 of 1979 of village Umrale. Rates therein are on and average for good tree at the rate of Rs.800/-. I, therefore, have no hesitation to fix rate of each guava tree in the present references. Accordingly I award compensation."

17. In view of this, all these appeals filed by the State are dismissed. There shall be no order as to costs.

[ANOOP V. MOHTA,J.]